

AMENDED IN ASSEMBLY AUGUST 23, 2004

AMENDED IN ASSEMBLY AUGUST 17, 2004

AMENDED IN ASSEMBLY JULY 2, 2004

AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

SENATE BILL

No. 1543

Introduced by Senator Figueroa

February 19, 2004

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, as amended, Figueroa. California Board of Accountancy: *tax preparers*.

(1) Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to \$2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract for litigation or enforcement purposes, as specified. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing an individual whose principal place of business is not in this state, and who has a valid and current license, certificate, or permit to practice public accountancy from another state, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission. The bill would authorize the board to assess specified administrative penalties and would require fees from those penalties to be deposited in the Accountancy Fund.

(2) Existing law requires a tax preparer, prior to rendering any tax preparation service, to provide a customer with specified information in writing. A violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission.

Because a violation of the bill by a tax preparer would be a crime, it would impose a state-mandated local program.

(3) Existing law authorizes the Franchise Tax Board, when it identifies an individual who has violated specific provisions regulating tax preparers, to notify the California Tax Education Council, which is required to notify the Attorney General, a district attorney, or a city attorney. Existing law authorizes these entities to cite a violating individual, levy a fine of up to \$1,000 per violation, and issue a cease and desist order.

This bill would instead require that the Franchise Tax Board notify the California Tax Education Council when it identifies a violation. The bill would delete the requirement that the council notify the Attorney General, a district attorney, or a city attorney. The bill instead would



authorize the Franchise Tax Board, pursuant to a reimbursement agreement with the California Tax Education Council, to cite a violating individual, levy a fine of up to \$5,000 per violation, and issue a cease and desist order. *The bill would prohibit the Franchise Tax Board from incurring costs associated with citing, levying a fine, or issuing a cease and desist order unless certain conditions are satisfied.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5000 of the Business and Professions
2 Code is amended to read:

3 5000. There is in the Department of Consumer Affairs the
4 California Board of Accountancy, which consists of 15 members,
5 seven of whom shall be licensees, and eight of whom shall be
6 public members who shall not be licentiates of the board or
7 registered by the board. The board has the powers and duties
8 conferred by this chapter.

9 The Governor shall appoint four of the public members, and the
10 seven licensee members as provided in this section. The Senate
11 Rules Committee and the Speaker of the Assembly shall each
12 appoint two public members. In appointing the seven licensee
13 members, the Governor shall appoint members representing a
14 cross section of the accounting profession with at least two
15 members representing a small public accounting firm. For the
16 purposes of this chapter, a small public accounting firm shall be
17 defined as a professional firm that employs a total of no more than
18 four licensees as partners, owners, or full-time employees in the
19 practice of public accountancy within the State of California.

20 This section shall become inoperative on July 1, 2011, and as of
21 January 1, 2012, is repealed, unless a later enacted statute, that
22 becomes effective on or before January 1, 2012, deletes or extends
23 the dates on which this section becomes inoperative and is

1 repealed. The repeal of this section renders the board subject to the
2 review required by Division 1.2 (commencing with Section 473).
3 However, the review of the board shall be limited to reports or
4 studies specified in this chapter and those issues identified by the
5 Joint Committee on Boards, Commissions, and Consumer
6 Protection and the board regarding the implementation of new
7 licensing requirements.

8 SEC. 2. Section 5015.6 of the Business and Professions Code
9 is amended to read:

10 5015.6. The board may appoint a person exempt from civil
11 service who shall be designated as an executive officer and who
12 shall exercise the powers and perform the duties delegated by the
13 board and vested in him or her by this chapter.

14 This section shall become inoperative on July 1, 2011, and, as
15 of January 1, 2012, is repealed, unless a later enacted statute,
16 which becomes effective on or before January 1, 2012, deletes or
17 extends the dates on which it becomes inoperative and is repealed.

18 SEC. 3. Section 5025.2 is added to the Business and
19 Professions Code, to read:

20 5025.2. (a) The Legislature finds that there are occasions
21 when the California Board of Accountancy urgently requires
22 additional expenditure authority in order to fund unanticipated
23 enforcement and litigation activities. Without sufficient
24 expenditure authority to obtain the necessary additional resources
25 for urgent litigation and enforcement matters, the board is unable
26 to adequately protect the public. Therefore, it is the intent of the
27 Legislature that, apart from, and in addition to, the expenditure
28 authority that may otherwise be established, the California Board
29 of Accountancy shall be given the increase in its expenditure
30 authority in any given current fiscal year that is authorized by the
31 Department of Finance pursuant to the provisions of subdivision
32 (b) of this section, for costs and services in urgent litigation and
33 enforcement matters, including, but not limited to, costs for
34 professional and consulting services and for the services of the
35 Attorney General and the Office of Administrative Hearings.

36 (b) Notwithstanding Control Section 27.00 of the annual
37 Budget Act, Section 11006 of the Government Code, and the
38 amount listed in the annual Budget Act for expenditure, the
39 Department of Finance shall authorize up to two million dollars
40 (\$2,000,000) in additional expenditures for the California Board

1 of Accountancy upon a showing by the board that those funds are
2 necessary for public protection and that the shortfall was not
3 anticipated. These additional expenditures shall be payable from
4 the Accountancy Fund for purposes of the board's litigation or
5 enforcement activities in any given current fiscal year.

6 SEC. 4. Section 5025.3 is added to the Business and
7 Professions Code, to read:

8 5025.3. (a) Whenever the board enters into a contract for
9 litigation or enforcement purposes, including, but not limited to,
10 contracts pursuant to Section 5025.1, funds may be encumbered
11 in the fiscal year the contract is executed and expended at any time
12 during the subsequent 24 months commencing with the last day of
13 the fiscal year in which the contract is executed.

14 (b) Notwithstanding Section 13340 of the Government Code,
15 funds encumbered for a contract pursuant to subdivision (a) of this
16 section are continuously appropriated without regard to fiscal
17 year, however, the appropriation is limited to the period for which
18 funds are authorized to be encumbered under subdivision (a).

19 SEC. 5. Section 5050 of the Business and Professions Code
20 is amended to read:

21 5050. (a) No person shall engage in the practice of public
22 accountancy in this state unless such person is the holder of a valid
23 permit to practice public accountancy issued by the board;
24 provided, however, that nothing in this chapter shall prohibit a
25 certified public accountant or a public accountant of another state,
26 or any accountant of a foreign country lawfully practicing therein,
27 from temporarily practicing in this state on professional business
28 incident to his regular practice in another state or country.

29 (b) This section shall become inoperative on January 1, 2006,
30 and as of that date is repealed.

31 SEC. 6. Section 5050 is added to the Business and Professions
32 Code, to read:

33 5050. (a) No person shall engage in the practice of public
34 accountancy in this state unless the person is the holder of a valid
35 permit to practice public accountancy issued by the board or a
36 holder of a practice privilege pursuant to Article 5.1 (commencing
37 with Section 5096).

38 (b) This section shall become operative on January 1, 2006.

39 SEC. 7. Section 5063.3 is added to the Business and
40 Professions Code, to read:

1 5063.3. (a) No confidential information obtained by a
2 licensee, in his or her professional capacity, concerning a client or
3 a prospective client shall be disclosed by the licensee without the
4 written permission of the client or prospective client, except the
5 following:

6 (1) Disclosures made by a licensee in compliance with a
7 subpoena or a summons enforceable by order of a court.

8 (2) Disclosures made by a licensee regarding a client or
9 prospective client to the extent the licensee reasonably believes it
10 is necessary to maintain or defend himself or herself in a legal
11 proceeding initiated by the client or prospective client.

12 (3) Disclosures made by a licensee in response to an official
13 inquiry from a federal or state government regulatory agency.

14 (4) Disclosures made by a licensee or a licensee's duly
15 authorized representative to another licensee in connection with a
16 proposed sale or merger of the licensee's professional practice.

17 (5) Disclosures made by a licensee to either of the following:

18 (A) Another licensee to the extent necessary for purposes of
19 professional consultation.

20 (B) Organizations that provide professional standards review
21 and ethics or quality control peer review.

22 (6) Disclosures made when specifically required by law.

23 (7) *Disclosures specified by the board in regulation.*

24 (b) In the event that confidential client information may be
25 disclosed to persons or entities outside the United States of
26 America in connection with the services provided, the licensee
27 shall inform the client in writing and obtain the client's written
28 permission for the disclosure.

29 SEC. 8. Section 5076 of the Business and Professions Code
30 is amended to read:

31 5076. (a) In order to renew its registration, a firm providing
32 attest services, other than a sole proprietor or a small firm as
33 defined in Section 5000, shall complete a peer review prior to the
34 first registration expiration date after July 1, 2008, and no less
35 frequently than every three years thereafter.

36 (b) For purposes of this article, the following definitions apply:

37 (1) "Peer review" means a study, appraisal, or review
38 conducted in accordance with professional standards of the
39 professional work of a licensee or registered firm by another
40 licensee unaffiliated with the licensee or registered firm being

1 reviewed. The peer review shall include, but not be limited to, a
2 review of at least one attest engagement representing the highest
3 level of service performed by the firm and may include an
4 evaluation of other factors in accordance with requirements
5 specified by the board in regulations.

6 (2) “Attest services” include an audit, a review of financial
7 statements, or an examination of prospective financial
8 information, provided, however, “attest services” shall not
9 include the issuance of compiled financial statements.

10 (c) The board shall adopt regulations as necessary to
11 implement, interpret, and make specific the peer review
12 requirements in this section, including, but not limited to,
13 regulations specifying the requirements for the approval of peer
14 review providers, and regulations establishing a peer review
15 oversight committee.

16 (d) The board shall review whether to implement the program
17 specified in this section in light of the changes in federal and state
18 law or regulations or professional standards, and shall report its
19 findings to the Legislature and the department by September 1,
20 2005.

21 SEC. 9. Section 5088 of the Business and Professions Code
22 is amended to read:

23 5088. (a) Any person who is the holder of a valid and
24 unrevoked license as a certified public accountant issued under the
25 laws of any state and who applies to the board for a license as a
26 certified public accountant under the provisions of Section 5087
27 may, after application for licensure and after providing evidence
28 of qualifying continuing education, perform the same public
29 accounting services in this state as a certified public accountant
30 licensed under Section 5092 or 5093 until the time his or her
31 application for a license is granted or rejected.

32 (b) An applicant meeting the requirements of subdivision (a)
33 who certifies that he or she has met the requirements of Section
34 5095 may perform attest services in this state until the time his or
35 her application for a license is granted or rejected.

36 (c) This section shall remain operative until January 1, 2006,
37 and as of that date is repealed.

38 SEC. 10. Section 5088 is added to the Business and
39 Professions Code, to read:

1 5088. (a) Any individual who is the holder of a current and
2 valid license as a certified public ~~account~~ *accountant* issued under
3 the laws of any state and who applies to the board for a license as
4 a certified public accountant under the provisions of Section 5087
5 may, until the time the application for a license is granted or
6 denied, practice public accountancy in this state only under a
7 practice privilege pursuant to the provisions of Article 5.1
8 (commencing with Section 5096), except that, for purposes of this
9 section, the individual is not disqualified from a practice privilege
10 during the period the application is pending by virtue of
11 maintaining an office or principal place of business, or both, in this
12 state. The board may by regulation provide for exemption, credit,
13 or proration of fees to avoid duplication of fees.

14 (b) This section shall become operative on January 1, 2006.

15 SEC. 11. Article 5.1 (commencing with Section 5096) is
16 added to Chapter 1 of Division 3 of the Business and Professions
17 Code, to read:

18
19 Article 5.1. Practice Privileges
20

21 5096. (a) An individual whose principal place of business is
22 not in this state and who has a valid and current license, certificate
23 or permit to practice public accountancy from another state may,
24 subject to the conditions and limitations in this article, engage in
25 the practice of public accountancy in this state under a practice
26 privilege without obtaining a certificate or license under this
27 chapter if the individual satisfies one of the following:

28 (1) The individual has continually practiced public
29 accountancy as a certified public accountant under a valid license
30 issued by any state for at least four of the last ten years.

31 (2) The individual has a license, certificate, or permit from a
32 state which has been determined by the board to have education,
33 examination, and experience qualifications for licensure
34 substantially equivalent to this state's qualifications under Section
35 5093.

36 (3) The individual possesses education, examination, and
37 experience qualifications for licensure which have been
38 determined by the board to be substantially equivalent to this
39 state's qualifications under Section 5093.

1 (b) The board may designate states as substantially equivalent
2 under paragraph (2) of subdivision (a) and may accept individual
3 qualification evaluations or appraisals conducted by designated
4 entities, as satisfying the requirements of paragraph (3) of
5 subdivision (a).

6 (c) To obtain a practice privilege under this section, an
7 individual who meets the requirements of subdivision (a), shall do
8 the following:

9 (1) In the manner prescribed by board regulation, notify the
10 board of the individual's intent to practice.

11 (2) Pay a fee as provided in Article 8 (commencing with
12 Section 5130).

13 (d) Except as otherwise provided by this article or by board
14 regulation, the practice privilege commences when the individual
15 notifies the board, provided the fee is received by the board within
16 30 days of that date. The board shall permit the notification to be
17 provided electronically.

18 (e) An individual who holds a practice privilege under this
19 article:

20 (1) Is subject to the personal and subject matter jurisdiction and
21 disciplinary authority of the board and the courts of this state.

22 (2) Shall comply with the provisions of this chapter, board
23 regulations, and other laws, regulations, and professional
24 standards applicable to the practice of public accountancy by the
25 licensees of this state and to any other laws and regulations
26 applicable to individuals practicing under practice privileges in
27 this state except the individual is deemed, solely for the purpose
28 of this article, to have met the continuing education requirements
29 and ethics examination requirements of this state when such
30 individual has met the examination and continuing education
31 requirements of the state in which the individual holds the valid
32 license, certificate, or permit on which the substantial equivalency
33 is based.

34 (3) Shall not provide public accountancy services in this state
35 from any office located in this state, except as an employee of a
36 firm registered in this state. This paragraph does not apply to
37 public accountancy services provided to a client at the client's
38 place of business or residence.

39 (4) Is deemed to have appointed the regulatory agency of the
40 state that issued the individual's certificate, license, or permit upon

1 which substantial equivalency is based as the individual's agent on
2 whom notices, subpoenas or other process may be served in any
3 action or proceeding by the board against the individual.

4 (5) Shall cooperate with any board investigation or inquiry and
5 shall timely respond to a board investigation, inquiry, request,
6 notice, demand or subpoena for information or documents and
7 timely provide to the board the identified information and
8 documents.

9 (f) A practice privilege expires one year from the date of the
10 notice, unless a shorter period is set by board regulation.

11 (g) (1) No individual may practice under a practice privilege
12 without prior approval of the board if the individual has, or
13 acquires at any time during the term of the practice privilege, any
14 disqualifying condition under paragraph (2) of this subdivision.

15 (2) Disqualifying conditions include:

16 (A) Conviction of any crime other than a minor traffic
17 violation.

18 (B) Revocation, suspension, denial, surrender or other
19 discipline or sanctions involving any license, permit, registration,
20 certificate or other authority to practice any profession in this or
21 any other state or foreign country or to practice before any state,
22 federal, or local court or agency, or the Public Company
23 Accounting Oversight Board.

24 (C) Pendency of any investigation, inquiry or proceeding by or
25 before any state, federal or local court or agency, including, but not
26 limited to, the Public Company Accounting Oversight Board,
27 involving the professional conduct of the individual.

28 (D) Any judgment or arbitration award against the individual
29 involving the professional conduct of the individual in the amount
30 of thirty thousand dollars (\$30,000) or greater.

31 (E) Any other conditions as specified by the board in
32 regulation.

33 (3) The board may adopt regulations exempting specified
34 minor occurrences of the conditions listed in subparagraph (B) of
35 paragraph (2) from being disqualifying conditions under this
36 subdivision.

37 5096.1. (a) Any individual, not a licensee of this state, who
38 is engaged in any act which is the practice of public accountancy
39 in this state, and who has not given notice of intent to practice
40 under practice privileges and paid the fee required pursuant to the

1 provisions of this article, and who has a license, certificate or other
2 authority to engage in the practice of public accountancy in any
3 other state, regardless of whether active, inactive, suspended, or
4 subject to renewal on payment of a fee or completion of an
5 educational or ethics requirement, is:

6 (1) Deemed to be practicing public accountancy unlawfully in
7 this state.

8 (2) Subject to the personal and subject matter jurisdiction and
9 disciplinary authority of the board and the courts of this state to the
10 same extent as a holder of a valid practice privilege.

11 (3) Deemed to have appointed the regulatory agency of the
12 state that issued the individual's certificate or license as the
13 individual's agent on whom notice, subpoenas, or other process
14 may be served in any action or proceeding by the board against the
15 individual.

16 (b) The board may prospectively deny a practice privilege to
17 any individual who has violated this section or implementing
18 regulations or committed any act which would be grounds for
19 discipline against the holder of a practice privilege.

20 5096.2. (a) Practice privileges may be denied for failure to
21 qualify under or comply with the provisions of this article or
22 implementing regulations, or for any act that if committed by an
23 applicant for licensure would be grounds for denial of a license
24 under Section 480 or if committed by a licensee would be grounds
25 for discipline under Section 5100, or for any act committed outside
26 of this state that would be a violation if committed within this state.

27 (b) The board may deny practice privileges using either of the
28 following procedures:

29 (1) Notifying the individual in writing of all of the following:

30 (A) That the practice privilege is denied.

31 (B) The reasons for denial.

32 (C) The earliest date on which the individual is eligible for a
33 practice privilege.

34 (D) That the individual has a right to appeal the notice and
35 request a hearing under the provisions of the Administrative
36 Procedure Act if a written notice of appeal and request for hearing
37 is made within 60 days.

38 (E) That, if the individual does not submit a notice of appeal
39 and request for hearing within 60 days, the board's action set forth
40 in the notice shall become final.

1 (2) Filing a statement of issues under the Administrative
2 Procedure Act.

3 (c) An individual who had been denied a practice privilege may
4 apply for a new practice privilege not less than one year after the
5 effective date of the notice or decision denying the practice
6 privilege unless a longer time period, not to exceed three years, is
7 specified in the notice or decision denying the practice privilege.

8 5096.3. (a) Practice privileges are subject to revocation,
9 suspension, fines or other disciplinary sanctions for any conduct
10 that would be grounds for discipline against a licensee of the board
11 or for any conduct in violation of this article or regulations
12 implementing this article.

13 (b) Practice privileges are subject to discipline during any time
14 period in which they are valid, under administrative suspension,
15 or expired.

16 (c) The board may recover its costs pursuant to Section 5107
17 as part of any disciplinary proceeding against the holder of a
18 practice privilege.

19 (d) An individual whose practice privilege has been revoked
20 may apply for a new practice privilege not less than one year after
21 the effective date of the board's decision revoking the individual's
22 practice privilege unless a longer time period, not to exceed three
23 years, is specified in the board's decision revoking the practice
24 privilege.

25 (e) The provisions of the Administrative Procedure Act,
26 including, but not limited to, the commencement of a disciplinary
27 proceeding by the filing of an accusation by the board shall apply
28 under this article.

29 5096.4. (a) The right of an individual to practice in this state
30 under a practice privilege may be administratively suspended at
31 any time by an order issued by the board or its executive officer,
32 without prior notice or hearing, for the purpose of conducting a
33 disciplinary investigation, proceeding, or inquiry concerning the
34 representations made in the notice, the individual's competence or
35 qualifications to practice under practice privileges, failure to
36 timely respond to a board inquiry or request for information or
37 documents, or under other conditions and circumstances provided
38 for by board regulation.

1 (b) The administrative suspension order is immediately
2 effective when mailed to the individual's address of record or
3 agent for notice and service as provided for in this article.

4 (c) The administrative suspension order shall contain the
5 following:

6 (1) The reason for the suspension.

7 (2) A statement that the individual has the right, within 30 days,
8 to appeal the administrative suspension order and request a
9 hearing.

10 (3) A statement that any appeal hearing will be conducted
11 under the provisions of the Administrative Procedure Act
12 applicable to individuals who are denied licensure, including the
13 filing of a statement of issues by the board setting forth the reasons
14 for the administrative suspension of practice privileges and
15 specifying the statutes and rules with which the individual must
16 show compliance by producing proof at the hearing and in addition
17 any particular matters that have come to the attention of the board
18 and that would authorize the administrative suspension, or the
19 denial of practice privileges.

20 (d) The burden is on the holder of the suspended practice
21 privilege to establish both qualification and fitness to practice
22 under practice privileges.

23 (e) The administrative suspension shall continue in effect until
24 terminated by an order of the board or the executive officer or
25 expiration of the practice privilege under administrative
26 suspension.

27 (f) Administrative suspension is not discipline and shall not
28 preclude any individual from applying for a license to practice
29 public accountancy in this state or from applying for a new practice
30 privilege upon expiration of the one under administrative
31 suspension, except that the new practice privilege shall not be
32 effective until approved by the board.

33 (g) Notwithstanding any administrative suspension, a practice
34 privilege expires one year from the date of notice unless a shorter
35 period is set by board regulation.

36 (h) Proceedings to appeal an administrative suspension order
37 may be combined or coordinated with proceedings for denial or
38 discipline of a practice privilege.

39 5096.5. Notwithstanding any other provision of this article,
40 an individual may not sign any attest report pursuant to a practice

1 privilege unless the individual meets the experience requirements
2 of Section 5095 and completes any continuing education or other
3 conditions required by the board regulations implementing this
4 article.

5 5096.6. In addition to the authority otherwise provided for by
6 this code, the board may delegate to the executive officer the
7 authority to issue any notice or order provided for in this article and
8 to act on behalf of the board, including, but not limited to, issuing
9 a notice of denial of a practice privilege and an interim suspension
10 order, subject to the right of the individual to timely appeal and
11 request a hearing as provided for in this article.

12 5096.7. Except as otherwise provided in this article, the
13 following definitions apply:

14 (a) Anywhere the term “license,” “licensee,” “permit,” or
15 “certificate” is used in this chapter or Division 1.5 (commencing
16 with Section 475), it shall include persons holding practice
17 privileges under this article, unless otherwise inconsistent with the
18 provisions of the article.

19 (b) Any notice of practice privileges under this article and
20 supporting documents is deemed an application for licensure for
21 purposes of the provisions of this code, including, but not limited
22 to, the provisions of this chapter and the provisions of Division 1.5
23 (commencing with Section 475) related to the denial, suspension
24 and revocation of licenses.

25 (c) Anywhere the term “employee” is used in this article it
26 shall include, but is not limited to, partners, shareholders, and
27 other owners.

28 5096.8. In addition to the authority otherwise provided by this
29 code, all investigative powers of the board, including those
30 delegated to the executive officer, shall apply to investigations
31 concerning compliance with, or actual or potential violations of,
32 the provisions of this article or implementing regulations,
33 including, but not limited to, the power to conduct investigations
34 and hearings by the executive officer under Section 5103 and to
35 issuance of subpoenas under Section 5108.

36 5096.9. The board is authorized to adopt regulations to
37 implement, interpret, or make specific the provisions of this
38 article.

39 5096.10. The provisions of this article shall only be operative
40 if commencing July 1, 2005, and continuing during the period

1 provided in Section 5096.11, there is an appropriation from the
2 Accountancy Fund in the annual Budget Act to fund the activities
3 in the article and sufficient hiring authority is granted pursuant to
4 a budget change proposal to the board to provide staffing to
5 implement this article.

6 5096.11. This article shall become operative on January 1,
7 2006. It shall remain in effect only until January 1, 2011, and as
8 of that date is repealed, unless a later enacted statute, which
9 becomes effective on or before January 1, 2011, deletes or extends
10 that date.

11 SEC. 12. Section 5100 of the Business and Professions Code
12 is amended to read:

13 5100. After notice and hearing the board may revoke,
14 suspend, or refuse to renew any permit or certificate granted under
15 Article 4 (commencing with Section 5070) and Article 5
16 (commencing with Section 5080), or may censure the holder of
17 that permit or certificate for unprofessional conduct that includes,
18 but is not limited to, one or any combination of the following
19 causes:

20 (a) Conviction of any crime substantially related to the
21 qualifications, functions and duties of a certified public accountant
22 or a public accountant.

23 (b) A violation of Section 478, 498, or 499 dealing with false
24 statements or omissions in the application for a license, in
25 obtaining a certificate as a certified public accountant, in obtaining
26 registration under this chapter, or in obtaining a permit to practice
27 public accountancy under this chapter.

28 (c) Dishonesty, fraud, gross negligence, or repeated negligent
29 acts committed in the same or different engagements, for the same
30 or different clients, or any combination of engagements or clients,
31 each resulting in a violation of applicable professional standards
32 that indicate a lack of competency in the practice of public
33 accountancy or in the performance of the bookkeeping operations
34 described in Section 5052.

35 (d) Cancellation, revocation, or suspension of a certificate or
36 other authority to practice as a certified public accountant or a
37 public accountant, refusal to renew the certificate or other
38 authority to practice as a certified public accountant or a public
39 accountant, or any other discipline by any other state or foreign
40 country.

1 (e) Violation of Section 5097.

2 (f) Violation of Section 5120.

3 (g) Willful violation of this chapter or any rule or regulation
4 promulgated by the board under the authority granted under this
5 chapter.

6 (h) Suspension or revocation of the right to practice before any
7 governmental body or agency.

8 (i) Fiscal dishonesty or breach of fiduciary responsibility of
9 any kind.

10 (j) Knowing preparation, publication, or dissemination of
11 false, fraudulent, or materially misleading financial statements,
12 reports, or information.

13 (k) Embezzlement, theft, misappropriation of funds or
14 property, or obtaining money, property, or other valuable
15 consideration by fraudulent means or false pretenses.

16 (l) The imposition of any discipline, penalty, or sanction on a
17 registered public accounting firm or any associated person of such
18 firm, or both, or on any other holder of a permit, certificate,
19 license, or other authority to practice in this state, by the Public
20 Company Accounting Oversight Board or the United States
21 Securities and Exchange Commission, or their designees under the
22 Sarbanes-Oxley Act of 2002 or other federal legislation.

23 (m) Unlawfully engaging in the practice of public accountancy
24 in another state.

25 SEC. 13. Section 5109 of the Business and Professions Code
26 is amended to read:

27 5109. The expiration, cancellation, forfeiture, or suspension
28 of a license, practice, privilege, or other authority to practice
29 public accountancy by operation of law or by order or decision of
30 the board or a court of law, or the voluntary surrender of a license
31 by a licensee shall not deprive the board of jurisdiction to
32 commence or proceed with any investigation of or action or
33 disciplinary proceeding against the licensee, or to render a
34 decision suspending or revoking the license.

35 SEC. 14. Article 6.5 (commencing with Section 5116) is
36 added to Chapter 1 of Division 3 of the Business and Professions
37 Code, to read:

38



Article 6.5. Administrative Penalties

5116. (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

(b) The board may assess administrative penalties under one or more provisions of this article. However, the total administrative penalty to be paid by the licensee shall not exceed the amount of the highest administrative penalty authorized by this article.

(c) The board shall adopt regulations to establish criteria for assessing administrative penalties based upon factors, including, but not limited to, actual and potential consumer harm, nature and severity of the violation, the role of the person in the violation, the person's ability to pay the administrative penalty, and the level of administrative penalty necessary to deter future violations of this chapter.

(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

(e) All administrative penalties collected under this article shall be deposited in the Accountancy Fund.

5116.1. In accordance with Section 5116 and applicable regulations, except as provided in Section 5116.2, any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.2. In accordance with Section 5116 and applicable regulations, any licensee who violates subdivision (a), (c), (i), (j) or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars (\$1,000,000) for the first violation and not more than five million dollars (\$5,000,000) for any subsequent violation, except that a licensee who is a natural

1 person may be assessed an administrative penalty of not more than
2 fifty thousand dollars (\$50,000) for the first violation and not more
3 than one hundred thousand dollars (\$100,000) for any subsequent
4 violation.

5 5116.3. In accordance with Section 5116 and applicable
6 regulations, any person who is found to have cheated or subverted
7 or attempted to subvert or cheat on any licensing examination or
8 who conspired with or aided or abetted any other person to cheat,
9 subvert or attempt to subvert any examination may be assessed an
10 administrative penalty of not more than five thousand dollars
11 (\$5,000) for the first violation and not more than ten thousand
12 dollars (\$10,000) for each subsequent violation.

13 5116.4. (a) The board's executive officer may request
14 assessment of an administrative penalty in any disciplinary or
15 other proceeding provided in this chapter or in any notice to an
16 applicant pursuant to Section 5112.

17 (b) The administrative penalty pursuant to subdivision (a) shall
18 become final unless contested within the time period provided for
19 the filing of a notice of appeal, for the filing of a notice of defense,
20 or for requesting a hearing in the proceeding.

21 (c) Nothing in this article shall prevent an administrative
22 penalty from being included in a final contested or default decision
23 of the board or in a notice issued pursuant to Section 5112 once the
24 time period for requesting a hearing has expired.

25 5116.5. The board may obtain a judgment in any court of
26 competent jurisdiction ordering the payment of any final
27 administrative penalty assessed by the board pursuant to this
28 article upon the filing of a certified copy of the board's final
29 decision or notice issued pursuant to Section 5112.

30 5116.6. Anywhere the term "licensee" is used in the article
31 it shall include certified public accountants, public accountants,
32 partnerships, corporations, holders of practice privileges, other
33 persons licensed, registered, or otherwise authorized to practice
34 public accountancy under this chapter, and persons who are in
35 violation of any provision of Article 5.1 (commencing with
36 Section 5096).

37 SEC. 15. Section 5134 of the Business and Professions Code
38 is amended to read:

39 5134. The amount of fees prescribed by this chapter is as
40 follows:

1 (a) The fee to be charged to each applicant for the certified
2 public accountant examination shall be fixed by the board at an
3 amount to equal the actual cost to the board of the purchase or
4 development of the examination, plus the estimated cost to the
5 board of administering the examination and shall not exceed six
6 hundred dollars (\$600). The board may charge a reexamination fee
7 equal to the actual cost to the board of the purchase or development
8 of the examination or any of its component parts, plus the
9 estimated cost to the board of administering the examination and
10 not to exceed seventy-five dollars (\$75) for each part that is subject
11 to reexamination.

12 (b) The fee to be charged to out-of-state candidates for the
13 certified public accountant examination shall be fixed by the board
14 at an amount equal to the estimated cost to the board of
15 administering the examination and shall not exceed six hundred
16 dollars (\$600) per candidate.

17 (c) The application fee to be charged to each applicant for
18 issuance of a certified public accountant certificate shall be fixed
19 by the board at an amount equal to the estimated administrative
20 cost to the board of processing and issuing the certificate and shall
21 not exceed two hundred fifty dollars (\$250).

22 (d) The application fee to be charged to each applicant for
23 issuance of a certified public accountant certificate by waiver of
24 examination shall be fixed by the board at an amount equal to the
25 estimated administrative cost to the board of processing and
26 issuing the certificate and shall not exceed two hundred fifty
27 dollars (\$250).

28 (e) The fee to be charged to each applicant for registration as
29 a partnership or professional corporation shall be fixed by the
30 board at an amount equal to the estimated administrative cost to the
31 board of processing and issuing the registration and shall not
32 exceed two hundred fifty dollars (\$250).

33 (f) The board shall fix the biennial renewal fee so that, together
34 with the estimated amount from revenue other than that generated
35 by subdivisions (a) to (e), inclusive, the reserve balance in the
36 board's contingent fund shall be equal to approximately nine
37 months of annual authorized expenditures. Any increase in the
38 renewal fee made after July 1, 1990, shall be effective upon a
39 determination by the board, by regulation adopted pursuant to
40 subdivision (k), that additional moneys are required to fund

1 authorized expenditures other than those specified in subdivisions
2 (a) to (e), inclusive, and maintain the board's contingent fund
3 reserve balance equal to nine months of estimated annual
4 authorized expenditures in the fiscal year in which the
5 expenditures will occur. The biennial fee for the renewal of each
6 of the permits to engage in the practice of public accountancy
7 specified in Section 5070 shall not exceed two hundred fifty
8 dollars (\$250).

9 (g) The delinquency fee shall be 50 percent of the accrued
10 renewal fee.

11 (h) The initial permit fee is an amount equal to the renewal fee
12 in effect on the last regular renewal date before the date on which
13 the permit is issued, except that, if the permit is issued one year or
14 less before it will expire, then the initial permit fee is an amount
15 equal to 50 percent of the renewal fee in effect on the last regular
16 renewal date before the date on which the permit is issued. The
17 board may, by regulation, provide for the waiver or refund of the
18 initial permit fee where the permit is issued less than 45 days
19 before the date on which it will expire.

20 (i) On and after January 1, 2006, the annual fee to be charged
21 an individual for a practice privilege pursuant to Section 5096 shall
22 be fixed by the board at an amount not to exceed 50 percent of the
23 biennial renewal fee provided in subdivision (f).

24 (j) The fee to be charged for the certification of documents
25 evidencing passage of the certified public accountant
26 examination, the certification of documents evidencing the grades
27 received on the certified public accountant examination, or the
28 certification of documents evidencing licensure shall be
29 twenty-five dollars (\$25).

30 (k) The actual and estimated costs referred to in this section
31 shall be calculated every two years using a survey of all costs
32 attributable to the applicable subdivision.

33 (l) Upon the effective date of this section the board shall fix the
34 fees in accordance with the limits of this section and, on and after
35 July 1, 1990, any increase in any fee fixed by the board shall be
36 pursuant to regulation duly adopted by the board in accordance
37 with the limits of this section.

38 (m) Fees collected pursuant to subdivisions (a) to (e), inclusive,
39 shall be fixed by the board in amounts necessary to recover the
40 actual costs of providing the service for which the fee is assessed,

1 as projected for the fiscal year commencing on the date the fees
2 become effective.

3 SEC. 16. Section 22252.1 is added to the Business and
4 Professions Code, to read:

5 22252.1. (a) No confidential information obtained by a tax
6 preparer, in his or her professional capacity, concerning a client or
7 a prospective client shall be disclosed by the tax preparer without
8 the written permission of the client or prospective client, except for
9 the following:

10 (1) Disclosures made by a tax preparer in compliance with a
11 subpoena or a summons enforceable by order of a court.

12 (2) Disclosures made by a tax preparer regarding a client or
13 prospective client to the extent the tax preparer reasonably
14 believes it is necessary to maintain or defend himself or herself in
15 a legal proceeding initiated by the client or prospective client.

16 (3) Disclosures made by a tax preparer in response to an official
17 inquiry from a federal or state government regulatory agency.

18 (4) Disclosures made by a tax preparer or to a tax preparer's
19 duly authorized representative to another tax preparer in
20 connection with a proposed sale or merger of the tax preparer's
21 professional practice.

22 (5) Disclosures made by a tax preparer to either of the
23 following:

24 (A) Another tax preparer to the extent necessary for purposes
25 of professional consultation.

26 (B) Organizations that provide professional standards review
27 and ethics or quality control peer review.

28 (6) Disclosures made when specifically required by law.

29 (b) In the event that confidential client information may be
30 disclosed to persons or entities outside the United States of
31 America in connection with the services provided, the tax preparer
32 shall inform the client in writing and obtain the client's written
33 permission for the disclosure.

34 (c) *It is the intent of the Legislature that this section*
35 *complement and does not replace Section 17530.5 as applied to tax*
36 *preparers by subdivision (f) of Section 1799.1a of the Civil Code.*

37 SEC. 17. Section 22253.2 of the Business and Professions
38 Code is amended to read:

39 22253.2. (a) The Franchise Tax Board shall notify the
40 California Tax Education Council when it identifies an individual

1 who has violated paragraph (1) of subdivision (a) of Section
2 22253.

3 (b) The Franchise Tax Board pursuant to an agreement with the
4 California Tax Education Council, as authorized in subdivision
5 (c), may do any of the following:

6 (1) Cite individuals preparing tax returns in violation of
7 subdivision (a) of Section 22253.

8 (2) Levy a fine up to five thousand dollars (\$5,000) per
9 violation.

10 (3) Issue a cease and desist order, which shall remain in effect
11 until the individual has come into compliance with the provisions
12 of paragraph (1) of subdivision (a) of Section 22253.

13 (c) The California Tax Education Council may enter into an
14 agreement with the Franchise Tax Board to provide
15 reimbursement to the Franchise Tax Board for any expenses
16 incurred by the Franchise Tax Board to implement *subdivision (a)*
17 *of this section.*

18 (d) *The Franchise Tax Board shall not incur any costs*
19 *associated with any of the activities authorized by subdivision (b)*
20 *until either one of the following has occurred:*

21 (1) *Commencing January 1, 2006, and continuing each year*
22 *thereafter, there is an appropriation in the Franchise Tax Board's*
23 *annual budget to fund the activities authorized by subdivision (b).*

24 (2) (A) *An agreement has been executed between the*
25 *California Tax Education Council and the Franchise Tax Board*
26 *that provides that an amount equal to all first year costs necessary*
27 *to implement and administer the activities authorized by*
28 *subdivision (b) shall be received by the Franchise Tax Board. For*
29 *purposes of this paragraph, first year costs include costs*
30 *associated with, but not limited to, the development of processes*
31 *or systems changes if necessary, and labor.*

32 (B) *An agreement has been executed between the California*
33 *Tax Education Council and the Franchise Tax Board that provides*
34 *that the annual costs incurred by the Franchise Tax Board as a*
35 *result of the activities authorized by subdivision (b) shall be*
36 *reimbursed by the California Tax Education Council to the*
37 *Franchise Tax Board.*

38 (C) *Pursuant to the agreement described in subparagraph (A),*
39 *the Franchise Tax Board has received an amount equal to the first*
40 *year costs.*

1 SEC. 18. No reimbursement is required by this act pursuant
2 to Section 6 of Article XIII B of the California Constitution
3 because the only costs that may be incurred by a local agency or
4 school district will be incurred because this act creates a new crime
5 or infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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